

FTB NOTICE

California Franchise Tax Board - Legal Division



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FTB NOTICE 93-9

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Subject: LARZ ELECTIONS - AMENDED RETURNS

Revenue and Taxation Code (RTC) sections 17052.15 and 23612.6 relate to the sales and use tax credit for the purchase of qualified property, and RTC sections 17266 and 24356.4 relate to the expensing of certain property used exclusively in a trade or business within the Los Angeles Revitalization Zone (LARZ). The portions of the above referenced sections relating to elections shall be referred to herein as the "LARZ elections."

In order to claim the credit or treat the cost of certain property as an expense under the applicable LARZ section, the taxpayer must, in part, affirmatively elect such treatment on the taxpayer's income or franchise tax return for the taxable or income year, as the case may be, to which the LARZ election applies. Questions have arisen whether the LARZ election may be made on an amended return, or whether it may only be made on an original return.

In the context of elections, the term "return" generally refers solely to original returns. IE. Riley Investment Co. v. Comm'r (1940) 331 U.S. 55; Pacific National Co. v. Welch (1938) 304 U.S. 191; Howe v. Comm'r (1941) 44 B.T.A. 894. Exceptions to this rule have been permitted only where allowing an election to be made on an amended return will merely correct errors and miscalculations in the original return, rather than fundamentally changing the method of determining a taxpayer's taxable income or the basis for determining the amount of the taxpayer's income tax liability. See IE. Riley Investment Co. v. Comm'r, *supra*, Howe v. Comm'r, *supra*. As a result, except as expressly provided below, all LARZ elections must be made on original returns.

MAKING ELECTION ON AMENDED RETURN FOR TAXABLE/INCOME YEAR 1992

The Franchise Tax Board (FTB) delayed its distribution of forms and instructions relative to the LARZ elections for the 1992 taxable/income year until August 1993 due to legislation which was pending during the spring of 1993. Technical deficiencies within the LARZ sections identified above, prior to the passage of corrective legislation in 1993, made it impossible for taxpayers to properly make an LARZ election. In order to accommodate taxpayers who were unable to make the LARZ election(s) on their original 1992 returns, the FTB, for taxable and income years beginning in 1992 only, will accept amended returns for all affected taxpayers providing for the applicable LARZ elections, provided that the LARZ election criteria has been otherwise fully satisfied.

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Affected taxpayers must file an amended return concerning the LARZ elections with the FTB for taxable/income year 1992 no later than June 30, 1994. Amended returns for taxable/income year 1992 filed after June 30, 1994 shall be ineffective with respect to any election concerning the LARZ sections.

The amended return, as well as all supporting documents, must be clearly marked (preferably in red) on the top of each respective first page, "AMENDED LARZ ELECTION". The FTB will accept the above-described amended returns pursuant to its administrative authority set forth in RTC sections 26422 and 19251 (collectively renumbered to 19501 and 19503 effective January 1, 1994).

1993 AND SUBSEQUENT TAXABLE/INCOME YEARS

With respect to 1993 and subsequent taxable/income years, and amended returns for 1992 filed after June 30, 1994, all LARZ elections shall be required to be made on the original return.

DRAFTING INFORMATION

The principal author of this notice is David T. Gemmingen of the Franchise Tax Board Legal Division. For further information regarding this notice, contact Mr. Gemmingen at the Franchise Tax Board Legal Division, P.O. Box 1468, Sacramento, CA, 95812-1468.